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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MARBLE BRIDGE FUNDING GROUP, INC.,	)	Case No. 4:15-CV-00177-YGR
Plaintiff,	)	PLAINTIFF MARBLE BRIDGE FUNDING
	)	GROUP, INC.'S MEMORANDUM IN
vs.	)	OPPOSITION TO DEFENDANTS'
	)	MOTION TO DISMISS FOR LACK OF
LIQUID CAPITAL EXCHANGE, INC.,	)	PERSONAL JURISDICTION AND
LIQUID CAPITAL OF COLORADO, SOL	)	MOTION TO QUASH SERVICE OF
ROTER, an individual, and BRUCE DAWSON,	)	PROCESS
an individual.	)	Date: March 10, 2015
	)	Time: 2:00 p.m.
Defendants.	)	Dept.: Courtroom 1, Fourth Floor
	)	Honorable Judge Yvonne Gonzalez Rogers

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1 I.

2 **INTRODUCTION**

3 Plaintiff MARBLE BRIDGE FUNDING GROUP, INC. (“Marble Bridge”) is a  
4 commercial finance company, organized under the laws of California, with its principal place of  
5 business in California, which provides accounts receivable financing to growing businesses that  
6 sell their products or services to other businesses. Such commercial finance companies are  
7 commonly referred to as “factors”.

8 Defendant LIQUID CAPITAL EXCHANGE, INC. (“Liquid Capital”) is a commercial  
9 finance company that also does factoring. Defendant SOL ROTER is Liquid Capital’s Vice-  
10 President, and Defendant BRUCE DAWSON is the president of a franchisee of Liquid Capital  
11 Exchange Inc., LIQUID CAPITAL OF COLORADO. Defendants report in their brief that  
12 Liquid Capital of Colorado is BDB Capital.

13 As set forth in Plaintiff’s Complaint, in or around November 2010, Defendants  
14 unknowingly factored a fraudulent company named Nature’s Own. When Defendants  
15 discovered the fraud, they demanded that the fraudsters induce a new factor to buy out Liquid  
16 Capital by concealing the fraudulent scheme so that Defendants could recoup most of the money  
17 paid to Nature’s Own. Despite Defendants’ respective assertions, each was intimately involved  
18 in procuring and ultimately defrauding a new factoring company (Plaintiff) to take over the  
19 Nature’s Own account.

20 Defendants have moved to dismiss Plaintiff’s complaint for lack of personal jurisdiction,  
21 and moved to quash service of process as to Defendant Roter. Alternatively, Defendants’ filed a  
22 motion to dismiss for failure to state a claim. Defendants’ arguments have no merit, and the  
23 respective Motions should be denied.

1 II.

2 **FACTUAL ALLEGATIONS**

3 **A. Facts Alleged In Complaint.**

4 Plaintiff MARBLE BRIDGE FUNDING GROUP (“Marble Bridge”) is a corporation  
5 organized under the laws of the State of California with its principal place of business in Walnut  
6 Creek, Contra Costa County, California. Cmplt. ¶1.

7 Defendant LIQUID CAPITAL EXCHANGE, INC. is a Delaware Corporation with its  
8 mailing address in Irving, Texas, and its principal place of business in Toronto, Ontario, Canada,  
9 branch franchises or offices in various states in the United States, and it does business in  
10 California. Cmplt. ¶2. Defendant SOL ROTER is vice-president of LIQUID CAPITAL  
11 EXCHANGE, INC., and resides in Toronto, Ontario, Canada. Cmplt. ¶¶ 4, 9.

12 Defendant LIQUID CAPITAL OF COLORADO is a business entity of unknown  
13 formation with its principal place of business in Broomfield, Colorado. Plaintiff is informed and  
14 believes that Liquid Capital of Colorado is a franchise of Liquid Capital Exchange, Inc., with  
15 Defendant BRUCE DAWSON, who resides in Colorado, serving as president. Cmplt. ¶¶ 3, 5.  
16 Both Marble Bridge and Liquid Capital are commercial finance companies that engage in  
17 “factoring”. Cmplt. ¶¶ 8, 9.

18 On or about November 1, 2010, Euler Hermes American Credit Indemnity Company  
19 issued Credit Insurance Policy No. 5033862, effective November 1, 2010 to October 31, 2011  
20 (the “Policy”), to Nature’s Own, Inc. and Nature’s Own LLC, a fraudulent company.  
21 Cmplt. ¶16. Liquid Capital was the finance company and beneficiary of the Nature’s Own  
22 Policy. Cmplt. ¶16.

23 After discovering Nature’s Own was a fraud, Roter, Dawson and Liquid Capital entered  
24 into an agreement with the other fraudsters and Euler to induce a new factor to buy out Liquid  
25 Capital by concealing the fraudulent scheme so that Defendants could recoup most of the money  
26 paid to the fraudulent participants. Cmplt. ¶¶ 18, 19. On May 9, 2011, unknown to Marble  
27

1 Bridge, Liquid Capital told Euler agent John Fitzgerald that there were no corroborating  
2 addresses for at least two of the fake buyers on the Euler-Nature's Own policy. Cmplt. ¶21.

3 In negotiating a buy-out agreement with Marble Bridge to take over the fraudulent  
4 Nature's Own account, Defendants conspired with Nature's Own fraudster Marsha Holloway aka  
5 Anette Zimmerman and only provided Liquid Capital's own generated A/R aging reports  
6 through Holloway. Cmplt. ¶22. Roter concealed from Marble Bridge that there had not been  
7 any payments. Cmplt. ¶22. The negotiations regarding the buy-out agreement occurred  
8 remotely, via telephone, email, and fax exchanges. **Hurley Dec. Ex. H, Mooney Depo. 41:10-**  
9 **43:04.** Marble Bridge conducted all of its negotiations with Defendants at its Walnut Creek,  
10 California headquarters. **Hurley Dec. Ex. H, Mooney Depo. 41:10-43:04.**

11 Defendants, with Holloway's knowledge, prepared falsified financial records  
12 misrepresenting that payments had been made on the receivables invoices and that the debts were  
13 current when, in fact, the payments were not current, and Roter, Dawson and Liquid Capital  
14 knew that the Nature's Own buyers on the invoices did not exist and would never make the  
15 payments. Cmplt. ¶23; **Hurley Dec. Ex. I, Holloway Depo. 199:13-205:10.**

16 In reliance on the representations and unaware of the omissions of Liquid Capital as  
17 discussed herein, on or about July 13, 2011, Marble Bridge purchased from Liquid Capital the  
18 invoices of Nature's Own buyers, which were subject to coverage under the Policy in an amount  
19 in excess of \$275,000.00, paying off Liquid Capital. Cmplt. ¶25. As a result of the  
20 misrepresentations and omissions of the Liquid Capital defendants with Euler Hermes, Marble  
21 Bridge in the next six months purchased over \$2 million worth of invoices from the fake  
22 Nature's Own buyers and, to date, has lost in excess of \$2.8 million as a result of the conduct of  
23 Defendants. Cmplt. ¶¶ 26; 35.

24 **B. Excerpts from Depositions.**

25 Where a FRCP Rule 12(b)(2) motion challenges the facts alleged, a Rule 12(b)(2) motion  
26 must be decided on the basis of competent evidence (usually declarations and discovery  
27  
28

1 materials). *Data Disc, Inc., v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1289, fn.5.  
2 (9th Cir. 1977).

3 The following transcript excerpts are from depositions taken by the parties in *Marble*  
4 *Bridge Funding Group v Euler Hermes American Credit Indemnity Company* and related cases,  
5 United States District Court, Northern District of California, Case No. CV12-02729-EJD.

6 Paul Candau is the Founder, President, and CEO of Marble Bridge. Excerpts from  
7 Candau's deposition are attached as **Exhibit F to the Declaration of Vincent P. Hurley**.

8 The following sets forth relevant portions of his deposition, taken August 4, 2014,  
9 concerning the referral of Liquid Capital from Euler Hermes insurance company to Marble  
10 Bridge:

11 92:20-94:02:

12 Q. Now, it states on the first line, "Referred by Euler Hermes." Do you  
13 have any personal knowledge as to how that happened?

14 A. I'm not sure when you say "personal knowledge."

15 Q. Something that you were involved with, you were present when a  
referral -- whatever that means -- was made by Euler to Marble Bridge?

16 A. I was told by Andrew and I think maybe whoever took a message, but it  
17 was confirmed in a later conversation with Jonathan.

18 Q. I'm asking the source. You weren't there when the referral took place;  
correct?

19 A. Correct.

20 Q. So what you know about the -- this referral is what someone else told  
21 you; correct?

22 A. No. John [Fitzgerald, Euler Hermes agent] confirmed it in  
conversation.

23 Q. But the original referral to which you were not present, you did not hear  
24 that happen, somebody at Marble Bridge -- somebody else at Marble  
Bridge told you about it; correct?

25 A. Yes.

26 Q. And who was that somebody else?

27 ...  
28



1 THE WITNESS: Andrew.

2 BY MR. SAULITIS:

3 Q. Andrew Krone; correct? Anybody else at Marble Bridge inform you,  
4 tell you that Nature's Own was referred by Euler Hermes?

5 A. I'm not certain what you're discussing, but Tammy knew and she told  
6 me, and John knew and he told me, so all three people said the same  
7 thing.

8 **Hurley Dec. Ex. F.**

9 Andrew Krone is the Senior Vice President of Marble Bridge. Excerpts from Krone's  
10 deposition are attached as **Exhibit G to the Declaration of Vincent P. Hurley**. The following  
11 sets forth relevant portions of his deposition, taken August 5, 2014, concerning the referral of  
12 Liquid Capital from Euler Hermes agent John Fitzgerald:

13 56:06-57:02:

14 Q. And when next did you have occasion to communicate with John  
15 Fitzgerald?

16 A. 2011.

17 Q. What precipitated that?

18 A. He made a referral to me of Nature's Own Pharmacy.

19 Q. When you say "referral" –

20 A. I got a call in my office from Rick Wallace, Richard Wallace, Nature's  
21 Own Pharmacy, and he said he was referred by John Fitzgerald of Euler.

22 Q. So the first call that you received came not from John Fitzgerald, but  
23 rather someone identifying themselves as Rick Wallace of Nature's Own  
24 Pharmacy?

25 A. Richard Wallace, yes.

26 Q. And in that call, Richard Wallace says to you "John Fitzgerald referred me  
27 to you," or words –

28 A. No.

Q. What did Wallace say in that conversation with reference to John  
Fitzgerald or Euler?

A. I had a message from one of my staff members that said that Richard  
Wallace called from Nature's Own Pharmacy, was referred from John  
Fitzgerald at Euler.

1 76:23-77:02:

2 Q. Okay. Now, describe the conversation that took place in that conference  
3 room from one to three hours, as best you can recall today. [*During a face to*  
4 *face meeting with criminals Anette Zimmerman and Richard Wallace at the*  
*Marble Bridge office.*]

5 A. We discussed several topics. We talked about their unhappiness with Liquid  
6 Capital; she relayed the story that John Fitzgerald had relayed to me about  
7 their unhappiness, their desire to find a new financing company. I asked  
8 questions about their business, about Rick Wallace, and talked about Marble  
9 Bridge and how we operate.

10 Q. Any other topics discussed?

11 A. Not that I can recall.

12 **Hurley Dec. Ex. G.**

13 Marsha Holloway aka Anette Zimmerman is believed to be one of the masterminds  
14 behind Nature's Own. Excerpts from Holloway's deposition are attached as **Exhibit I to the**  
15 **Declaration of Vincent P. Hurley.**

16 The following sets forth relevant portions of her deposition, taken October 21, 2013,  
17 concerning the involvement of the Liquid Capital defendants in the fraud on Marble Bridge:  
18 199:13-205:10:

19 Q. What was the extent of your own involvement in these matters?

20 A. Well, my involvement -- I don't think I talked on the phone to anybody but  
21 my involvement was when I got the original -- when Karl [*another of the*  
22 *criminal group*] sent me a copy of the original aging report from Liquid  
23 Capital, I said, You're crazy; this is not going to get purchased; there's no  
24 way they're going to purchase these old invoices; I don't know what you  
25 think you're doing but these invoices are all overdue; every single one is past  
26 due and if I were Marble Bridge, I wouldn't buy anything because this is  
27 ridiculous. So apparently there was another conversation between Karl and  
28 the Canadian Liquid Capital guy and the next document that came to me  
from Liquid Capital or came from the email -- I don't know who it was  
emailed to but that I got a copy of that aging report without due dates. The  
aging report was -- showed the current amount due to Liquid Capital but it  
did not give any reference to whether they were creditworthy or not  
creditworthy, meaning they pay on time? How long had you been working  
with them? Et cetera.

29 Q. Payment history.

30 A. Yeah. There was nothing and not your normal aging. It was just a little  
block.

1 Q. It was a slice of what was current?

2 A. Yeah. No, it wasn't anything current. Everything was old but it appeared on  
3 current because it said these are the debtors, this is what is owed. I said,  
4 Nobody will buy that because they're all old, so I don't know how you think  
5 you're going to solve this problem.

6 Q. Who was the author of the two aging reports that you just described -- the  
7 one that had the negative --

8 A. Bruce from Liquid Capital. And during this time --

9 Q. He was also the author of the modified aging report that white-washed some  
10 of the older --

11 A. Yes.

12 Q. -- laundry?

13 A. Yes. And while all this process was -- the process of getting the Euler  
14 documents set up, the process of buying. Before they bought the invoices, it  
15 took time to get the documents back and I don't know what all. It just wasn't  
16 really fast.

17 Bruce became a freak, a fanatic blowing up the phone at Nature's, cussing  
18 out -- just irate with the receptionist at Regis offices in Elk Grove, calling  
19 Euler to see if the beneficiary had been changed and my cell phone as a  
20 broker is still on record, has always been on record with Regis because that  
21 is the default because I've been a broker for so long.

22 When Karl didn't call back or nobody answered, Regis defaulted to me.  
23 They never patched through a phone call without permission. They  
24 announce who is calling. I have -- this is for Nature's Own. I'm calling from  
25 Elk Grove. I have Bruce with Liquid Capital on the phone. How do you  
26 want me to address this call?

27 And so when they called me, it was -- I mean, I was taken back because:  
28 (a) why were they calling my cell phone number anyway? They didn't  
29 announce who it was. It was Bruce on the phone screaming so the Regis  
30 office just patched it through with no announcement.

31 So I have -- I said hello and I have Bruce screaming at the top of his lungs  
32 about getting this deal done, who I need to talk to somebody in charge.  
33 Where is Rick?

34 So I tried to calm him down. So I told him, I asked him, What is the  
35 problem? And he said, Is this Anette? And he talked to me before so I had  
36 to say yes.

37 And he said, Are you in the office? I said, No.

38 He said, Well, I'm sitting out front of your office right now and I demand  
39 to see somebody because this is a Regis office.

1 He had flipped out of his mind. He said, Who is in there that I could talk  
2 to? I said, I don't know.

3 He said that he had had another Liquid Capital agent go to Texas who was  
4 just down the road from the Monde office and had gone over there and  
5 verified that that too was a Regis office.

6 Apparently Bruce had paid his own expense on airline tickets and flown to  
7 the other locations to determine that they were Regis office. He did not  
8 come -- my knowledge -- to Florida. He didn't go to Phantom because that  
9 would have been -- it's not a Regis office. It would have been a real  
10 business.

11 But to the other offices he had confirmed that they were all Regis offices.  
12 He had apparently driven by all of the warehouses and determined that those  
13 were not -- apparently he went to the Nature's Own warehouse, asked them  
14 if Nature's Own had any rental space in there, they didn't know of Nature's  
15 Own.

16 So, he had done a lot of investigating to find out that those invoices were  
17 bogus, that he was trying to get rid of and in that conversation he said that  
18 he has a million dollars of his own money -- that the way the franchises work  
19 with Liquid Capital is he had to put up a million of his own money, then  
20 they back him with more. So of this 200 what ever 60 thousand, he would  
21 lose it out of his money and he was just hysterical. I mean, hysterical is a  
22 mild word for it. I said I would talk to Rick. And you know, from my  
23 understanding, the buyout was supposed to already be done, I would find  
24 out and get Rick to get back with him.

25 So I immediately called Karl and said, you know, You got a major  
26 problem and now you've drug me into the middle of this problem and I was  
27 just as hysterical as Bruce was. And Karl ended up calling back to Canada  
28 talking to the CEO who was apprized of what was going on, knew what  
Bruce had claimed that these were all Regis offices and this was all bogus  
accounts and that gentleman agreed with Karl to get the buyout done so they  
could wash their hands of it and the sooner the better before you, Liquid  
Capital, threatened to sue Karl. All threaten to sue them, always boast  
about, you know, if it doesn't go his way, he's going to sue and stop paying.  
He's got this whole elaborate line of flipping out that he pulls.

29 But nonetheless, they got Bruce to calm down some how and I don't know  
30 who -- I don't think anybody talked to Bruce after that. I believe he  
31 continued to blow up people's phones, every customer's phones and he -- but  
32 the guy in Canada had kind of curtailed him so they could get this done.  
33 When the payout came, they got their money.

34 Apparently Bruce was entitled to a \$10,000 commission of some sort and  
35 he had spent \$10,000 in airline tickets and travel so he started demanding to  
36 Karl and Rick that he get that 20 grand and that they need to pay him or else  
37 he was going to tell somebody. You know, he was going to tell this is a  
38 fraudulent account.

39 Karl ended up calling back to Canada, got that curtailed. That went on for  
40 a little while -- two, three weeks, finally got that shut up and Karl never paid

1 him any money but it was hushed financial -- that financial arm had passed  
the hot potato basically.

2 Q. Off on to Marble Bridge?

3 A. Correct. And if they had not done that, there would only be a \$260,000  
4 loss. ...

5 **Hurley Dec. Ex. I.**

6 Tammy Mooney is the Operations Manager at Marble Bridge. Excerpts from Mooney's  
7 deposition are attached as **Exhibit H to the Declaration of Vincent P. Hurley**. The following  
8 sets forth relevant portions of her deposition, taken August 6, 2014, concerning the involvement  
9 of Roter and Dawson:

10 41:10-43:04:

11 Q. Were you in any way involved with the take-out of Liquid Capital by Marble  
12 Bridge?

13 A. Yes.

14 Q. How so?

15 A. I typed up the payoff letter.

16 Q. Any other involvement?

17 A. Spoke with Sol Roter.

18 Q. Anything else?

19 A. Just to get the transaction taken care of so we could pay them off.

20 Q. And was Roter in Toronto, as far as you're aware?

21 A. I believe so.

22 Q. Was there a physical closing of that transaction where people were together in  
23 a room signing documents, that is the payoff and transition from Liquid  
Capital to Marble Bridge?

24 A. You mean were we all in the room together? No.

25 Q. You know what a closing is, closing of a deal?

26 A. Yes.

27 Q. Sometimes it's done in an office, sometimes it's not, sometimes it's done on  
28 the telephone, by email, by fax, whatever ways people sign off on things,

1 close, finish. How was the closing of the Liquid Capital/Marble Bridge deal  
accomplished physically?

2 A. Email.

3 Q. So people were where they started, and Marble Bridge was in California and  
4 Liquid Capital was wherever Liquid Capital was, and people sent emails and  
did the deal in that fashion; correct?

5 A. Correct.

6 Q. There was no physical travel involved?

7 A. No.

8 Q. And arranged the deal by telephone, right, and email?

9 A. Correct.

10 Q. No one actually met anybody in-person?

11 A. Not to my knowledge.

12 Q. Did anybody from Liquid Capital ever travel to or visit the offices of Marble  
13 Bridge?

14 A. Not to my knowledge.

15 Q. Okay. Any visit in the State of California in connection with that transaction?

16 A. Not to my knowledge.

17 44:20-45:16:

18 Q. Now, going back, you became aware that a beneficiary endorsement needed  
to be obtained to replace -- in favor of Marble Bridge such as had previously  
19 been in place in favor of Liquid Capital; isn't that correct?

20 A. Correct.

21 Q. How did you become aware of that need?

22 A. I don't recall specifically.

23 Q. What's your best general recollection?

24 A. I was aware that Euler Hermes was insuring the receivables. I had emails, I  
believe, with Anette and Sol Roter, communication regarding changing over  
25 the beneficiary as part of getting the payoff and everything to a close, we had  
to have that in position.

26 Q. And you were the person assigned to make sure that that got done?

27 A. Correct.

28

1 Q. Okay. Who gave you that responsibility?

2 A. It was my account.

3 Q. Okay. So that was something that came with the territory?

4 A. Correct.

5 **Hurley Dec. Ex. H.**

6 **C. Email Correspondence.**

7 Again, where a FRCP Rule 12(b)(2) motion challenges the facts alleged, a Rule 12(b)(2)  
8 motion must be decided on the basis of competent evidence (usually declarations and discovery  
9 materials). *Data Disc, Inc., supra*, 557 F.2d at 1289, fn.5.

10 Attached to the **Exhibit J to the Declaration of Vincent P. Hurley** is a true and  
11 correct copy of an email, dated July 12, 2011, sent from Defendant Sol Roter to Tammy  
12 Mooney of Marble Bridge. Roter writes, in part, that:

13 “Like most factoring companies it is also not our practice to be distributing much  
14 more than an aging report to a competitor taking over one of our clients accounts. We  
15 prefer and have been advised that the other factor needs to conduct and reply upon their  
16 own due diligence including confirmation of invoices they are purchasing.”

17 **III.**

18 **LEGAL STANDARD**

19 Federal Rule of Civil Procedure 8(a)(2) “requires only ‘a short and plain statement of the  
20 claim showing that the pleader is entitled to relief.’ “Specific facts are not necessary; the  
21 statement need only ‘give the defendant fair notice of what the ... claim is and the grounds upon  
22 which it rests.’” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atl. Corp. v. Twombly*,  
23 550 U.S. 544, 555 (2007)).

24 When defendant's motion to dismiss is made as its initial response and the court decides  
25 the motion without conducting an evidentiary hearing, plaintiff need only make a prima facie  
26 showing that personal jurisdiction exists. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995).  
27 In this context, a “prima facie” showing means that plaintiff has produced admissible evidence  
28

1 which, if believed, would be sufficient to establish the existence of personal jurisdiction. See  
2 *Harris Rustsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.* 328 F.3d 1122, 1129 (9th Cir.  
3 2003). Moreover, until an evidentiary hearing or trial on the merits (a) the complaint's  
4 uncontroverted factual allegations must be accepted as true; (b) the court will draw “reasonable  
5 inferences” from the complaint in favor of plaintiff; and (c) any factual conflicts in the parties'  
6 declarations must be resolved in plaintiff's favor. *Harris Rustsky & Co. Ins. Services, Inc.*,  
7 *supra*, 328 F.3d at 1129.

#### 8 IV.

#### 9 ARGUMENT

##### 10 A. Defendants Sol Roter, Bruce Dawson, and BDB Capital, Inc. Are Subject To 11 Personal Jurisdiction in California.

12 Where a nonresident defendant's “contacts” with California are not sufficiently  
13 “continuous and systematic” for general jurisdiction, it may still be subject to jurisdiction on  
14 claims related to its activities here. Such “limited” or “specific” personal jurisdiction requires a  
15 showing that:

16 (1) The nonresident defendant must do some act or consummate some transaction with  
17 the forum or perform some act by which he purposefully avails himself of the privilege of  
18 conducting activities in the forum, thereby invoking the benefits and protections of its laws;

19 (2) The claim must be one which arises out of or results from the defendant's forum-  
20 related activities; and

21 (3) Exercise of jurisdiction must be reasonable.

22 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477–478 (1985); *Data Disc, Inc.*, *supra*, 557  
23 F.2d at 1287.

24 1. In negotiating a “buy-out” agreement and ultimately defrauding Marble  
25 Bridge Funding Group, Inc., a corporation organized under the laws of California, with its  
26 principal place of business in California, Defendants Sol Roter, Bruce Dawson, and BDB  
27  
28



1 **Capital, Inc. purposefully availed themselves of the privileges of conducting activities in**  
2 **California.**

3 “Purposeful availment” is satisfied where defendant committed a wrongful intentional  
4 act; expressly aimed at the forum state; causing harm that defendant knew or should have known  
5 was likely to be suffered in the forum state. *Washington Shoe Co. v. A-Z Sporting Goods Inc.*,  
6 704 F3d 668, 678–679 (9th Cir. 2012).

7 An individual's contract with an out-of-state party cannot alone automatically establish  
8 sufficient minimum contacts in the other party's home forum. *Burger King Corp., supra*, 471 US  
9 at 463. Instead, the prior negotiations and contemplated future consequences, along with the  
10 terms of the contract and the parties' actual course of dealing, must be evaluated to determine  
11 whether a defendant purposefully established minimum contacts within the forum. *Id.*

12 Personal jurisdiction may not be avoided merely because the defendant did not physically  
13 enter the forum State. “Although territorial presence frequently will enhance a potential  
14 defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is  
15 an inescapable fact of modern commercial life that a substantial amount of business is transacted  
16 solely by mail and wire communications across state lines, thus obviating the need for physical  
17 presence within a State in which business is conducted.” *Id.* at 476. Indeed, the Supreme Court  
18 has consistently rejected the notion that an absence of physical contacts can defeat personal  
19 jurisdiction. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774–775 (1984); see also *Calder v.*  
20 *Jones*, 465 U.S. 783, 778–790 (1984); *McGee v. International Life Insurance Co.*, 355 U.S. 220,  
21 222–223 (1957).

22 a. Wrongful Act:

23 After discovering that Nature’s Own was a fraudulent company, Defendants Roter  
24 Dawson and Liquid Capital entered into an agreement with the Nature’s Own fraudsters and  
25 Euler to induce a new factor to buy out Liquid Capital by concealing the fraudulent scheme.  
26 Cmplt. ¶19. Indeed, there is extensive deposition testimony regarding Defendant Dawson and  
27 Defendant Roter’s respective involvement in ultimately defrauding Marble Bridge. See **Hurley**  
28

1 **Dec. Ex. I, Holloway Depo. 199:13-205:10; Hurley Dec. Ex. H, Mooney Depo. 41:10-41:22;**  
2 **44:20-45:16.** Thus, given that the material facts alleged in the complaint are construed in the  
3 light most favorable to the non-moving party, the “wrongful act” prong of the purposeful  
4 availment test is satisfied.

5 b. Expressly Aimed At The Forum State:

6 In *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1112 (9th Cir. 2002), the Court held that  
7 where fraudulent communications were intended to induce California managers into a  
8 detrimental contract arrangement, and where defendants knew that plaintiff’s principal place of  
9 business was in California, knew that the decisionmakers for plaintiff were located in California,  
10 and communicated directly with those California decisionmakers, defendants actions were  
11 “expressly aimed” at the forum state.

12 Contrary to Defendants’ argument that “[a]ny of the limited negotiations that occurred  
13 prior to the execution of the Buyout Agreement were between Exchange and Plaintiff,”  
14 Defendants Roter and Dawson were intimately involved. Analogous to the facts in *Dole*, Roter,  
15 although located in Toronto, Canada, communicated directly with Tammy Mooney, Operations  
16 Manager with Marble Bridge in Marble’s Bridge’s Walnut Creek, California headquarters, in  
17 negotiating and eventually agreeing to the buy-out agreement. **Hurley Dec. Ex. H, Mooney**  
18 **Depo. 41:10-43:04; 44:20-45:16; Hurley Dec. Ex. J.** The fact that Roter was not physically  
19 present in California is inconsequential. *Burger King Corp., supra*, 471 U.S. at 476; *Keeton,*  
20 *supra*, at 774–775; *Calder, supra*, 465 U.S. 778–790; *McGee, supra*, 355 U.S. at 222–223.

21 Further, as part of the negotiations regarding the buy-out agreement, Dawson, Roter, and  
22 Liquid Capital conspired with Holloway and prepared falsified financial records misrepresenting  
23 that payments had been made on the receivables invoices and that the debts were current.  
24 Cmpl. ¶23; **Hurley Dec. Ex. I, Holloway Depo. 199:13-205:10.** Thus, similar to the fraudsters  
25 in *Dole*, Roter, Dawson and Liquid Capital, respectively, were engaged and/or contributed to the  
26 negotiations of the buy-out agreement resulting in the ultimate fraud on Marble Bridge, thereby  
27 satisfying the second prong of the “purposeful availment test”  
28

1 Finally, Defendants' argument that "it is Plaintiff who reached out to Exchange about the  
2 transaction involving Natures Own, not the other way around" (Roter Dec. at ¶14.), is simply  
3 incorrect. As alleged in the Complaint and supported via deposition testimony, upon discovering  
4 that Nature's Own was a fraud, Defendants entered into an agreement with Holloway and Euler  
5 agent John Fitzgerald to induce a new factor into buying out Liquid Capital on the Nature's Own  
6 Account. Cmpl. ¶¶ 18-25. John Fitzgerald then reached out to Marble Bridge, referred Marble  
7 Bridge to the Nature's Own policy, and put Marble Bridge in contact with Nature's Own  
8 fraudsters Zimmerman aka Holloway and Rick Wallace. See **Hurley Dec. Ex. F, Candau**  
9 **Depo. 92:20-94:02**; See also **Hurley Dec. Ex. G, Krone Depo. 56:06-57:02; 76:23-77:02**.  
10 Plaintiff and Defendants then worked together in negotiating the buy-out agreement. **Hurley**  
11 **Dec. Ex. H, Mooney Depo. 44:20-45:16**.

12 c. Causing Harm That Defendant Knew Or Should Have Known Was Likely To Be  
13 Suffered In The Forum State:

14 As a result of Defendants' fraudulent conduct, Plaintiff has been damaged in an amount  
15 not less than \$2.8 million. Cmpl. ¶35.

16 Defendants argue that they "could not have contemplated future consequences in  
17 California because they were not parties to the negotiations or the Buyout Agreement" and that  
18 "the terms of the Buyout Agreement do not reference California." First, as previously set forth,  
19 Defendants were indeed key figures in the negotiations regarding the buy-out agreement with  
20 Marble Bridge.

21 Second, Defendants cannot, after-the-fact, feign ignorance regarding the location of  
22 future consequences of the buy-out agreement and fraud. Indeed, Marble Bridge is a respected  
23 commercial finance company, organized under the laws of California, with its principal place of  
24 business in California. Marble Bridge's negotiations with Defendants regarding the buy-out  
25 agreement occurred, via telephone calls, and email and fax exchanges, at Marble Bridge's  
26 headquarters in Walnut Creek, California.

1 Further, Defendants selectively fail to mention the fact that the buy-out agreement itself,  
2 which is attached to Defendants' Motion to Dismiss, has "Marble Bridge Funding Group, Inc."  
3 letterhead, contains Marble Bridge's Walnut Creek, California address, and Marble Bridge's  
4 Walnut Creek, California area code. Thus, contrary to Defendants assertions, the buy-out  
5 agreement itself, even apart from prior negotiations with Marble Bridge officials in California,  
6 put the Defendants on "notice" of Marble Bridge's status as a California corporation, and that  
7 any consequences from the agreement would necessarily be felt in California. Defendants  
8 purposefully availed themselves of the privileges of conducting business in California.

9 **2. Plaintiffs' fraud claims against Defendants arise from Defendants' respective**  
10 **activities in California.**

11 The but-for test is utilized to determine whether a particular claim arises out of or is  
12 related to forum-related activities and thereby satisfies the second requirement for specific  
13 jurisdiction. *Ballard, supra*, 65 F.3d at 1500. Here, but for Defendants fraudulent conduct in  
14 inducing Marble Bridge to agree to the buy-out agreement of Liquid Capital's account with  
15 Nature's Own, Marble Bridge would not have been injured as alleged. Again, Defendants were  
16 each intimately involved in defrauding Marble Bridge (**Hurley Dec. Ex. I, Holloway Depo.**  
17 **199:13-205:10; Hurley Dec. Ex. H, Mooney Depo. 41:10-41:22; 44:20-45:16**), and contrary to  
18 Defendants assertions, the fact that Defendants were not physically in California while engaging  
19 in the fraudulent conduct is inconsequential.

20 **3. Exercising personal jurisdiction over Defendants is reasonable and would not**  
21 **offend traditional notions of fair play and substantial justice.**

22 Under the third and final prong of the "minimum contacts" test, it must appear that the  
23 exercise of jurisdiction would "comport with fair play and substantial justice." *Burger King*  
24 *Corp., supra*, 471 U.S. at 477-478. The burden is on defendant to present a "compelling case  
25 that the exercise of jurisdiction would not be reasonable." *Menken v. Emm*, 503 F3d 1050, 1057  
26 (9th Cir. 2007).

1 In determining “reasonableness,” courts must consider the following factors: (1) the  
2 extent of defendant's “purposeful” interjection; (2) the burden on defendant in defending in the  
3 forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum  
4 state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the  
5 controversy; (6) the importance of the forum to plaintiff's interest in convenient and effective  
6 relief; and (7) the existence of an alternative forum. See *Burger King Corp.*, *supra*, 471 US at  
7 476–477; *Bancroft & Masters, Inc. v. Augusta Nat. Inc.* 223 F.3d 1082 (9th Cir. 2002).

8 a. Extent of Defendants’ Purposeful Interjection into California

9 The weaker the plaintiff's showing of purposeful availment and relatedness to forum-  
10 related acts, the less a defendant need show in terms of unreasonableness to defeat jurisdiction;  
11 and vice versa. *Burger King Corp.*, *supra*, 471 U.S. at 477.

12 Defendants entered into an agreement with the Nature’s Own fraudsters and Euler to  
13 induce a new factor to buy out Liquid Capital. Cmpl. ¶19; **Hurley Dec. Ex. I, Holloway Depo.**  
14 **199:13-205:10**. In conducting the negotiations with Marble Bridge, Defendant Roter, although  
15 located in Toronto, Canada, spoke with and sent emails/faxes to individuals at Marble Bridge in  
16 California. **Hurley Dec. Ex. H, Mooney Depo. 41:10-43:04; 44:20-45:16**. Further, Defendants  
17 conspired with Holloway and prepared falsified financial records misrepresenting that payments  
18 had been made on the receivables invoices and that the debts were current. Cmpl. ¶23; **Hurley**  
19 **Dec. Ex. I, Holloway Depo. 199:13-205:10**. Thus, Defendants’ assertion that Defendants’  
20 “contacts with California are anything but virtually nonexistent” is disingenuous. This factor  
21 therefore weighs in favor of Plaintiffs.

22 b. Burden on Defendants in California

23 The mere fact local litigation is inconvenient (or some other forum more convenient) is  
24 not enough to sway this factor in any defendants favor. Litigation locally must be so “gravely  
25 difficult” that it puts the defendant at a severe disadvantage in comparison to his or her opponent.  
26 See *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990) (citing *Burger King Corp.*, *supra*, 471  
27 U.S. at 478. In *Dole Food Co.*, the Court held that it was not unreasonable for California to  
28

1 assert personal jurisdiction over European defendants who allegedly defrauded a California  
2 plaintiff, where it was shown that defendants traveled frequently to the U.S. and were fluent in  
3 English. The burden on defendants and any sovereignty concerns were not controlling. *Dole*  
4 *Food Co.*, 303 F.3d at 1116.

5 Here, like the fraudsters in *Dole*, although Defendant Roter is a citizen of Canada, his  
6 company does business in the United States. Indeed, Roter himself, on behalf of Liquid Capital,  
7 helped negotiate the \$275,000.00 buy-out agreement with Marble Bridge, located in California.  
8 **Hurley Dec. Ex. H, Mooney Depo. 41:10-43:04; 44:20-45:16.** Liquid Capital is a Delaware  
9 Corporation with its mailing address in Irving, Texas, and Defendant Dawson resides in  
10 Colorado. This factor weighs in favor of Plaintiff, as mere inconvenience in defending this  
11 matter in California is simply not enough to sway in favor of Defendants.

12 c. Extent of Conflict with a Foreign Sovereign

13 It is recognized that there is a generally a “higher jurisdictional barrier” required for  
14 aliens. *Rano v. Sipa Press, Inc.*, 987 F. 2d 580, 588 (9th Cir. 1993). Contrary to Defendants  
15 assertion that “Mr. Roter has no California-based relationships,” Roter’s fraudulent actions  
16 established lasting, negative connections and relationships with individuals at Marble Bridge in  
17 California. It would not be within “traditional notions of fair play and substantial justice” to  
18 allow Roter to use his residency in Canada as a “shield” from defending his fraudulent actions in  
19 California or any other state in the United States.

20 d. California’s Interest in Adjudicating the Dispute

21 The state generally has a “manifest interest” in providing its residents with a convenient  
22 forum for redressing injuries inflicted by out-of-state actors.” *Burger King Corp., supra*, 471  
23 U.S. 473. Here, Defendants induced a new factor (eventually Marble Bridge) into buying out  
24 Liquid Capital’s account with Nature’s Own. Cmplt. ¶19; **Hurley Dec. Ex. I, Holloway Depo.**  
25 **199:13-205:10.** Thus, given California’s “manifest interest” in protecting its citizens from the  
26 tortious conduct of out-of-state actors, this factor weighs in favor of Plaintiff.

1 e. The Most Efficient Judicial Resolution of the Controversy

2 This factor focuses on the location of the evidence and witnesses. *Caruth v. International*  
3 *Psychoanalytical Ass’n*, 59 F.3d 126, 129 (9th Cir. 1995). It is no longer weighed heavily,  
4 however, given the modern advances in communication and transportation. *Panavision Intern.,*  
5 *L.P. v. Toeppen*, 141 F.3d 1316 (9th Cir. 1998). Here, the majority of the evidence and  
6 witnesses are located in California. Thus, this factor weighs in favor of Plaintiff.

7 f. The Existence of an Alternate Forum

8 Plaintiff bears the burden of proving the unavailability of an alternate forum. *Caruth,*  
9 *supra*, 59 F.3d at 126. Plaintiff acknowledges that Colorado or Canada are available as  
10 alternative forums. Given the nature of the case and the location of the majority of the evidence  
11 and potential witnesses, Plaintiff has a strong preference in litigating this matter in California.

12 **B. Defendant Roter was Property Served Per the Hague Convention Standards.**

13 Contrary to Defendants’ argument, Roter was properly served per the Hague Convention  
14 Standards.

15 Attached as **Exhibit B to the Declaration of Ryan M. Thompson** is a true and correct  
16 copy of the Hague Service Convention. Article 10 of the Hague Convention states as follows:

17 Article 10

18 **Provided the State of destination does not object, the present Convention**  
19 **shall not interfere with –**

20 a) the freedom to send judicial documents, by postal channels, directly to  
21 persons abroad,

22 **b) the freedom of judicial officers, officials or other competent persons of**  
23 **the State of origin to effect service of judicial documents directly through**  
24 **the judicial officers, officials or other competent persons of the State of**  
25 **destination,**

26 c) the freedom of any person interested in a judicial proceeding to effect service  
27 of judicial documents directly through the judicial officers, officials or other  
28 competent persons of the State of destination. [Emphasis added].

Attached as **Exhibit C to the Declaration of Ryan M. Thompson** is a true and correct  
copy of a list of Canada’s objections to the Hague Service Convention, which notes that Canada  
has only made declarations pursuant to Articles 15 and 16.

Attached as **Exhibit D to the Declaration of Ryan M. Thompson** is a true, correct, and official copy of that portion of Ontario, Canada's Courts of Justice Act R.R.O. 1990, Regulation 194, Rules of Civil Procedure, which provide, in pertinent part, that:

***Originating Process***

**16.01** (1) An originating process shall be served personally as provided in rule 16.02 or by an alternative to personal service as provided in rule 16.03. R.R.O. 1990, Reg. 194, r. 16.01 (1); O. Reg. 131/04, s. 8.

**PERSONAL SERVICE**

**16.02** (1) Where a document is to be served personally, the service shall be made,

**Individual**

(a) on an individual, other than a person under disability, by leaving a copy of the document with the individual;

(2) A person effecting personal service of a document need not produce the original document or have it in his or her possession.

R.R.O. 1990, Reg. 194, r. 16.02 (2).

**PROOF OF SERVICE**

***Affidavit of Service***

**16.09** (1) Service of a document may be proved by an affidavit of the person who served it (Form 16B).

R.R.O. 1990, Reg. 194, r. 16.09 (1).

Attached as **Exhibit A to the Declaration of Ryan M. Thompson** is the Proof of Service of Summons containing the signed affidavit of John Caicedo, stating that he personally served Sol Roter in Toronto, Canada on December 15, 2014, prior to the removal of this action to this Court. The Proof of Service of Summons was filed on December 26, 2014 at the Contra Costa County Superior Court, prior to removal of this action to this Court. Thus, based on the Hague Convention, Canada's laws and regulations regarding service, and the manner of service on Roter, Roter was indeed properly served.

When faced with the identical question in New Jersey, District Judge Bassler correctly ruled as follows:

"The principal method for service of judicial documents abroad, as set forth in Articles 2 through 7 of the Hague Convention, is through a designated Central Authority, who in turn either serves the documents or arranges to have them served by an appropriate agency. *See* Multilateral Service Abroad of Judicial and Extrajudicial Documents Convention done at The Hague, Nov. 15, 1965, 20 U.S.T. 361, Art. 2-7. This, however, is not the only acceptable method of service under the Convention. As recognized by the Third Circuit, the Hague Convention permits alternate channels of service so long as they are



1 not objected to by the receiving State. *DeJames v. Magnificence Carriers*, 654  
2 F.2d 280, 288 (3d Cir.1981); *see also Trump Taj Mahal Assoc. v. Hotel Svcs.,*  
3 *Inc.*, 183 F.R.D. 173 (D.N.J.1998).

4 For example, service may be effected through diplomatic or consular  
5 agents of the sending State (Art. 8); through consular channels to authorities  
6 within a contracting State who are authorized by that State to effect service (Art.  
7 9); through the judicial officers, officials, or other competent person of the State  
8 of destination (Art. 10); pursuant to any other agreement between the States  
9 involved (Art. 11); or pursuant to the internal law of the receiving State for  
10 documents coming from abroad (Art. 19).

11 Here, [plaintiff] contends that it complied with Article 10(b) of the  
12 Hague Convention when, through a process server in Ontario, it personally  
13 effected service of the summons and complaint on the Vice President of  
14 [defendant corporation] OZ Optics Canada, Jim Burke. Article 10 provides that  
15 if the State of destination does not object, service may be effected by judicial  
16 officers, officials or other competent persons of the State of origin directly  
17 through judicial officers, officials or other competent persons of the State of  
18 destination. Hague Convention, at Art. 10.

19 Canada has not availed itself of the opportunity, as provided under  
20 Article 21,1 to object to Article 10(b)'s service provision. In fact, on accession,  
21 Canada affirmatively stated that it does not object to the methods of service set  
22 forth in Article 10(b) and (c). U.S.C.S. International Agreements, at 283 (Law  
23 Co-op 1995); *see also* [http:// www.hcch.net/e/status/stat14e.html](http://www.hcch.net/e/status/stat14e.html) # ca (Canada  
24 Accession Notification, Declaration III).

25 Courts have also looked to the internal service rules of the destination  
26 State to determine whether that State would object to the particular method of  
27 service utilized under Article 10. *Hunt's Pier Assoc. v. Conklin*, 156 B.R. 464,  
28 470 (Bankr.E.D.Pa.1993).

29 The applicable Ontario rule of civil procedure is Rule 16 regarding  
30 Service of Documents. Rule 16.01(1) requires that originating process (i.e., the  
31 summons and complaint) shall be served personally under Rule 16.02 or by  
32 alternative to personal service provided in Rule 16.03. Rule 16.02(1)(c)  
33 provides, as to personal service on a corporation that is not a municipality, that  
34 such service shall be made 'by leaving a copy of the document with an officer,  
35 director or agent of the corporation, or with a person at any place of business of  
36 the corporation who appears to be in control or management of the place of  
37 business. . . ' service clearly complied with Rule 16.02(1)(c). Accordingly, this  
38 Court concludes that Ontario, Canada would not object to the method of service  
39 utilized by [plaintiff] here."

40 *Dimensional Communications, Inc. v. OZ Optics Ltd.*, 218 F.Supp.2d 653, 655-  
41 657 (D.N.J. 2002).

42 Although Plaintiffs maintain that service of Roter was proper, nonetheless, dismissal of a  
43 complaint on the ground that process was not properly served is inappropriate when there exists  
44 a reasonable prospect that service may yet be obtained; in such instances, district court should, at

1 most, quash service, leaving plaintiffs free to effect proper service. See *Hickory Travel Systems,*  
2 *Inc. v. TUI AG*, 213 F.R.D. 547, 553, N.D.Cal. (2003) citing *Umbenhauer v. Woog* 969 F2d 25,  
3 31 (3rd Cir. 1992).

4 **C. The Standard for Granting Leave to Amend is ‘Generous’ and thus, in the**  
5 **Event the Court is Inclined to Grant Defendants’ Motion to Dismiss, Such Motion Should**  
6 **be Granted Without Prejudice.**

7 Assuming, *arguendo*, that the Court is inclined to grant Defendants’ Motion to Dismiss,  
8 Federal Rules of Civil Procedure 15(a) expressly states leave to amend “shall be freely given  
9 when justice so requires.” FRCP 15(a); *United States v. Corinthian Colleges*, 655 F.3d 984, 995  
10 (9th Cir. 2011) —standard for granting leave to amend is “generous.” The court considers five  
11 factors in assessing the propriety of leave to amend—bad faith, undue delay, prejudice to the  
12 opposing party, futility of amendment, and whether the plaintiff has previously amended the  
13 complaint. *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004).

14 Here, there has been no evidence of bad faith or undue delay on Plaintiff’s part. As set  
15 forth in Plaintiff’s Complaint, Plaintiff sued Euler Hermes American Credit Indemnity Company  
16 and two of the criminals, Marsha Kay Holloway and Richard Wallace, in the United States  
17 District Court, Case No. CV12-02729-EJD and Related Case No. CV12-01839 EJD, for their  
18 acts and omissions regarding the insuring and ensuring payments and credit limits for fraudulent  
19 companies and criminals. Cmplt. ¶11. When Plaintiff discovered the acts and omissions of  
20 Defendants in the instant matter, Plaintiff moved to add the Liquid Capital actors in the federal  
21 actions, but that motion was denied. Cmplt. ¶12. Plaintiff therefore sues Defendants in this  
22 action.

23 Further, although Plaintiff contends that the complaint is more than sufficiently plead,  
24 amending the complaint would provide Plaintiff the opportunity to provide more specificity  
25 regarding Defendants’ respective involvement in negotiating the buy-out agreement as shown  
26 herein. Finally, granting Plaintiff’s leave to amend would not prejudice Defendants, as there  
27 have been no prior amendments to Plaintiff’s Complaint.

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V.

**CONCLUSION**

For the foregoing reasons, Plaintiff Marble Bridge Funding Group, Inc. respectfully requests that the Court issue an order (1) denying Defendants’ Motion to Dismiss and (2) denying Defendants’ Motion to Quash.

Dated: February 3, 2015

LAW OFFICES OF VINCENT P. HURLEY  
A Professional Corporation

By:           /s/ Ryan M. Thompson            
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